

DETAILED ACTION

Receipt is acknowledged of amendment filed on June 8, 2009. Claims 1, 2, 4, 13-19 are pending. All claim rejections indicated in the previous Office action dated December 19, 2008 are withdrawn in view of the claim amendment made by applicant. New rejections are made in this Office action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (JP 407330551 A, translation).

Yamamoto discloses a method of treating and conditioning hair with a hair treatment composition comprising 0.5-50 wt % of an organic solvent consisting of a 5-8 C monohydric aliphatic alcohol, such as pentanol, hexanol and 2-methyl-1-pentanol. See [0002], [0023]. The purpose of the invention is to prevent damage to hair exposed to dryer, permanent, wave, and hair dye. See *Id.* The reference teaches that, the use of organic solvent allows hair refining ingredient permeate the inside of the hair. See [0003]. The reference also teaches to make the products in the form of lotion and foam comprising an aqueous base and surfactants. See Examples. Example 19 discloses a hair treatment composition comprising dimethylammonium chloride, dimethylpolysiloxane polymers, cetyl alcohol, and benzyl alcohol. The reference

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teaches that the composition imparts the hair with “sustainable excellent softness” and made in the form of rinse, treatment, hair cream, hair blow. See abstract. Although the present claim recites the hair treatment composition used in the claimed method is “in the form of a leave-on, post wash conditioner”, such form is not patentably distinct from the prior art, which also is in the form of a hair condition treatment to protect hair from damages.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto, as applied to claims 17-19 are above, and further in view of the Hoeffkes (US 4898725 A).

Yamamoto does not disclose the hair protective composition in the form of shampoo.

Hoeffkes teaches that incorporating hair conditioning components to hair rinse or shampoo to make improved products is a well known practice in hair cosmetic art. The prior art teaches adding quaternary ammonium compound to enhance the hair conditioning effect. See col. 5, line 60 - col. 6, line 46. The reference teaches deterative surfactants including anionic surfactants are commonly used in an amount ranging from about 1-25 % by weight of a shampoo. See col. 6, line 50 – 60.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Yamamoto by making a shampoo

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formulation comprising the hair benefit agents of the prior art, i.e., cationic surfactant and organic solvent, to obtain a shampoo which imparts improved cosmetic properties to hair. Since Yamamoto teaches the use of organic solvent allows hair refining ingredient permeate the inside of the hair, and Hoeffkes teaches hair conditioning products in form of shampoo, the skilled artisan would have had a reasonable expectation of successfully producing a shampoo formulation which effectively delivers the cationic surfactants to hair and thereby conditioning the hair.

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4, 13-19 have been considered but are moot in view of the new ground(s) of rejection in part and unpersuasive in part.

Applicant asserts the hair reducing compositions of Yamamoto brings about “both physical and chemical changes’ to the hair fibers that are not normally encountered in shampooing or post-wash conditioning”. Applicant also asserts that the prior art reference does not suggest the disclosed use of the organic solvent to provide a hair conditioning benefit to “unmodified” hair.

The arguments are unpersuasive because Yamamoto unambiguously teaches the purpose of the prior art is to enhance the cosmetic benefit of the cationic hair conditioning agents to hair by the swelling effect of the organic solvent, and there is nothing in the reference to suggest that such beneficial cosmetic properties are realized only in hair reducing compositions. Examiner views the presence of the reducing agents in the prior art composition is solely due to the particular utility of the prior art composition, but the efficacy of organic solvent and cationic intention of the inventor to

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improve the particular hair treatment composition and prevent hair damage from the chemical process by incorporating the hair conditioning agents thereto; the reducing agents do not affect the hair conditioning mechanism per se. A skilled artisan would have reasonably expected that the enhancement of cationic surfactants by the organic solvents would obviously occur in other form of hair treatment compositions, such as shampoo or rinse out products.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605.

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The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GINA C. YU/
Primary Examiner, Art Unit 1611